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2 District of Arizona
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6 Attorneys for Plaintiff

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF ARIZONA

9 United States of America,

10 Plaintiff,

11 v.

12 Miguel Figueroa-Rodriguez,

13 Defendant.

CR 04-2222-TUC-DCB (JM)

PLEA AGREEMENT

14
15 The United States of America and the defendant agree to the following
16 disposition of this matter:

17 PLEA

18 1. The defendant agrees to plead guilty to Count 4 of the Indictment, which
19 charges the defendant with Aggravated Assault on a Federal Officer, a felony, in violation
20 of Title 18, United States Code, Sections 111(a)(1), 111(b), and 1114.

21 2. The defendant agrees to plead guilty to Count 16 of the Indictment, which
22 charges the defendant with Attempted Destruction of an Aircraft, a felony, in violation of
23 Title 18, United States Code, Sections 32(a)(1) and 32(a)(7).

24 STIPULATIONS, TERMS AND AGREEMENTS

25 3. The defendant understands that the maximum penalties for the offense
26 charged in Count 4 of the Indictment to which he is pleading is a fine not to exceed

1 \$250,000 a term of imprisonment of twenty (20) years or both, and a period of not more
 2 than five (5) years of supervised release. The defendant understands that the maximum
 3 penalties for the offense charged in Count 16 of the Indictment to which he is pleading is
 4 a fine not to exceed \$250,000, a term of imprisonment of twenty (20) years, or both, and a
 5 period of not more than five (5) years of supervised release.

6 4. The defendant agrees to pay a fine unless the defendant establishes the
 7 applicability of the exceptions contained in § 5E1.2(e) of the Sentencing Guidelines.

8 5. The defendant shall pay a special assessment of \$100 for each count of
 9 conviction. The special assessment is due and payable at the time the defendant enters the
 10 plea of guilty, but in no event shall be paid later than the time of sentencing unless the
 11 defendant is indigent. If the defendant is indigent, the special assessment will be collected
 12 according to Title 18, United States Code, Chapters 227 and 229.

13 Agreements Regarding Sentence

14 6. All remaining charges in the indictment to which this
 15 defendant is pleading guilty will be dismissed at sentencing.

16 7. Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P. and U.S.S.G. § 5K3.1, the
 17 government and the defendant stipulate and agree that the following is an appropriate
 18 disposition of this case: 1) The defendant is eligible for three points for acceptance of
 19 responsibility pursuant to U.S.S.G. § 3E1.1; 2) Pursuant to U.S.S.G. § 5K3.1, the
 20 government will move for a departure based on the early disposition provision; accordingly
 21 the parties have anticipated the following sentencing ranges:

22 Level 21 or 37 to 46 months imprisonment with no 5K3.1 departure;

23 Level 19 or 30 to 37 months imprisonment with a two level departure under 5K3.1;

24 Level 17 or 24 to 30 months imprisonment with a four-level departure under 5K3.1.

25 The plea agreement is conditioned upon the defendant having no criminal history.
 26

1 The government reserves the right to withdraw from the plea agreement should the
2 defendant have a criminal history. The parties reserve the right to withdraw from the plea
3 agreement should the Court not sentence the defendant in accordance with the plea
4 agreement.

5 8. If the Court, after reviewing this plea agreement, concludes any
6 provision is inappropriate, it may reject the plea agreement, giving the defendant, in
7 accordance with Rule 11(e)(4), Fed. R. Crim.P., an opportunity to withdraw defendant's
8 guilty plea.

9 9. The defendant and the government agree that this agreement does not in
10 any manner restrict the actions of the government in any other district or bind any other
11 United States Attorney's Office.

12 10. Then defendant agrees not to file any motions for downward departures
13 in this case and the United States agrees not to file any motions for upward departures. Any
14 motions for upward or downward departures filed in this case will be deemed as a breach
15 of this agreement and may be grounds for either party to withdraw from this agreement.

16 11. The defendant hereby waives any and all motions, defenses, probable
17 cause determinations, and objections which defendant could assert to the Information, the
18 Indictment or to the Court's entry of judgment against the defendant and imposition of
19 sentence upon the defendant consistent with this agreement. The defendant further waives:
20 (1) any right to appeal the Court's entry of judgment against defendant; (2) any right to
21 appeal the imposition of sentence upon defendant under Title 18, United States Code,
22 Section 3742 (sentence appeals); and (3) any right to collaterally attack defendant's
23 conviction and sentence under Title 28, United States Code, Section 2255. If defendant
24 files a notice of appeal, notwithstanding this agreement, defendant agrees that this case shall
25 be remanded to the district court to determine whether defendant is in breach of this
26 agreement and, if so, to permit the United States to withdraw from the plea agreement.

1 12. If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed
2 by any court in a later proceeding, the government will be free to prosecute the defendant
3 for all charges as to which it has knowledge, and any charges that have been dismissed
4 because of this plea agreement will be automatically reinstated. In such event, the
5 defendant waives any objections, motions, or defenses based upon the Speedy Trial Act or
6 the Sixth Amendment to the Constitution as to the delay occasioned by the later
7 proceedings.

8 13. The defendant understands and agrees to cooperate fully with the United
9 States Probation Office in providing:

- 10 (A) All criminal history information, i.e., all criminal convictions as defined
11 under the Sentencing Guidelines.
12 (B) All financial information, i.e., present financial assets or liabilities that
13 relate to the ability of the defendant to pay a fine or restitution.
14 (C) All history of drug abuse which would warrant a treatment condition as
15 part of sentencing.
16 (D) All history of mental illness or conditions which would warrant a
17 treatment condition as part of sentencing.

18 WAIVER OF DEFENDANT'S RIGHTS AND FACTUAL BASIS

19 Waiver of Rights

20 I have read each of the provisions of the entire plea agreement with the
21 assistance of counsel and understand its provisions. I have discussed the case and my
22 constitutional and other rights with my attorney. I understand that by entering my plea of
23 guilty I will be giving up my right to plead not guilty; to trial by jury; to confront, cross-
24 examine, and compel the attendance of witnesses; to present evidence in my defense; to
25 remain silent and refuse to be a witness against myself by asserting my privilege against
26

1 self-incrimination; all with the assistance of counsel; to be presumed innocent until proven
2 guilty beyond a reasonable doubt; and to appeal.

3 I agree to enter my guilty plea as indicated above on the terms and conditions
4 set forth in this agreement.

5 I have been advised by my attorney of the nature of the charge to which I am
6 entering my guilty plea. I have been advised by my attorney of the nature and range of the
7 possible sentence, and that I will not be able to withdraw my guilty plea if I am dissatisfied
8 with the sentence the court imposes.

9 My guilty plea is not the result of force, threats, assurances or promises other
10 than the promises contained in this agreement. I agree to the provisions of this agreement
11 as a voluntary act on my part, rather than at the direction of or because of the
12 recommendation of any other person, and I agree to be bound according to its provisions.
13 I agree that any Sentencing Guidelines range referred to herein or discussed with my
14 attorney is not binding on the Court and is merely an estimate.

15 I agree that this written plea agreement contains all the terms and conditions of
16 my plea and that promises made by anyone (including my attorney) that are not contained
17 within this written plea agreement are without force and effect and are null and void.

18 I am satisfied that my defense attorney has represented me in a competent
19 manner.

20 I am not now on or under the influence of any drug, medication, liquor, or other
21 intoxicant or depressant, which would impair my ability to fully understand the terms and
22 conditions of this plea agreement.

23 ELEMENTS OF AGGRAVATED ASSAULT ON A FEDERAL OFFICER

24 1. The defendant intentionally used force in resisting and intimidating U.S.
25 Immigration and Customs Enforcement Pilot John McCarthy;
26

2. The defendant did so while pilot McCarthy was engaged in, or on account of his official duties;
3. The defendant used a vehicle in such a way that it was capable of causing death or serious bodily injury.

ELEMENTS OF ATTEMPTED DESTRUCTION OF AN AIRCRAFT

1. The defendant willfully and intentionally attempted to damage, destroy, disable, or wreck;
2. Immigration and Customs Enforcement helicopter N23670, an aircraft in the special jurisdiction of the United States.

FACTUAL BASIS

On October 6, 2004, United States Border Patrol agents attempted a vehicle stop on a white Ford F-250 traveling southbound on State Route 286 near milepost 37. Although agents used lights and sirens to stop the vehicle, it failed to yield. All attempts to stop the vehicle, including the use of road spikes, were unsuccessful. The vehicle was driving erratically, several times crashing through fences to go cross-country through the desert at high rates of speed, narrowly missing numerous Border Patrol vehicles attempting to stop him. Approximately 15 minutes into the pursuit, a Border Patrol helicopter and an Immigration and Customs Enforcement Blackhawk helicopter arrived to assist ground agents. On at least one occasion, Pilot John McCarthy set the Blackhawk helicopter down on the ground in the path of defendant's vehicle in an attempt to stop it. The vehicle, however, continued to accelerate towards the Blackhawk, causing Agent McCarthy to take evasive action to avoid being rammed by the truck. The vehicle eventually drove into a wash and was unable to continue fleeing from law enforcement. The driver, later identified as the defendant, Miguel Figueroa-Rodriguez, was apprehended after a short foot chase with agents.

I further agree that the following facts accurately describe my conduct in connection with the offense to which I am pleading guilty and that if this matter were to proceed to trial the government could prove those facts beyond a reasonable doubt:


10/28/05
Date

Miguel Figueroa Rodriguez
MIGUEL FIGUEROA-RODRIGUEZ
Defendant

DEFENSE ATTORNEY'S APPROVAL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea, including the defendant's waiver of the right to appeal. No assurances, promises, or representations have been given to me or to the defendant by the government or by any of its representatives which are not contained in this written agreement. I concur in the entry of the plea as indicated above and on the terms and conditions set forth in this agreement as in the best interests of my client. I agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R. Crim. P.

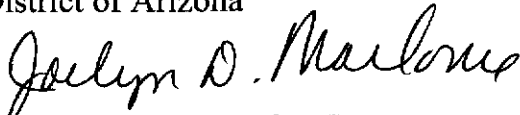
10/28/05
Date


BRENDA DABDOUB-CABALLERO
Attorney for Defendant

UNITED STATES' APPROVAL

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

PAUL K. CHARLTON
United States Attorney
District of Arizona


JOELYN D. MARLOWE
Assistant United States Attorney